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for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively  
Consolidated SIPA Liquidation of Bernard L. Madoff  
Investment Securities LLC and Bernard L. Madoff,

Plaintiff,

v.

Zephyros Limited,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 12-01278 (SMB)

**STIPULATION AND ORDER CONCERNING THE TRUSTEE'S  
MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff (the "Trustee") and Defendant Zephyros Limited ("Defendant"), by and through their respective undersigned counsel (collectively, the "Parties"), agree as follows:

WHEREAS, on August 28, 2014, the Trustee filed an Omnibus Motion Seeking Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) (the “Trustee’s Omnibus Motion”) (ECF Nos. 30-32). The Trustee’s Omnibus Motion sought, among other things, limited discovery relevant to good faith under either 11 U.S.C. § 548(c) or 11 U.S.C. § 550(b) (the “Limited Discovery Issue”) from Defendant, as well as leave to file an amended complaint against Defendant (the “Leave to Replead Issue”);

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “ET Decision”) that, among other things, granted the omnibus motion to dismiss filed by a number of defendants in the Trustee’s adversary proceedings (the “ET Motion”) including as to Defendant (other than with respect to transfers it allegedly received from Rye Select Broad Market Portfolio Limited, with respect to which the ET Motion was denied (the “Tremont Transfers”)) (*see Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF No. 14495);

WHEREAS, on March 9, 2017, the Parties entered into, and the Court so-ordered, a stipulated final order granting the ET Motion as to those claims dismissed by the ET Decision, and otherwise denying the ET Motion (the “ET Order”) (ECF No. 73);

WHEREAS, with respect to the claims and cases dismissed by the ET Decision, the Trustee appealed the ET Decision directly to the Second Circuit, by filing a motion for leave to appeal on April 28, 2017, which was granted on September 27, 2017. *Picard v. Banque Lombard Odier & Cie SA* (Case No. 17-1294, Document Nos. 1 & 388);

WHEREAS, the Trustee has surviving claims in this Adversary Proceeding as to the Tremont Transfers that were not dismissed by the ET Decision (the “Remaining Claims”), for which briefing thereafter occurred as to the Limited Discovery Issue;

WHEREAS, on June 18, 2018, the Court denied the branch of the Trustee's Motion as to the Limited Discovery Issue (ECF No. 102);

WHEREAS, on February 25, 2019, the U.S. Court of Appeals for the Second Circuit entered a decision reversing the ET Decision in *In re Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Secs. LLC* (Case No. 17-2992, Document No. 1311-1) (the "Second Circuit Decision");

WHEREAS, on April 23, 2019, the Second Circuit issued an order granting a Motion by the Appellee Defendants to Stay the Issuance of the Mandate Pending the Filing of a Petition for a Writ of Certiorari (Case No. 17-2992, Document No. 1503);

WHEREAS, on August 29, 2019, the Appellee Defendants filed a Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit (Case No. 19-277) (the "Cert Petition");

WHEREAS, under the Supreme Court's current briefing schedule, briefing on the Cert Petition will be concluded by November 2019;

WHEREAS, in connection with the Leave to Replead Issue, the Trustee intends to file a motion for leave to file an amended complaint;

WHEREAS, the Trustee currently has the ability to file a motion for leave to file an amended complaint solely with respect to the Remaining Claims;

WHEREAS, there is substantial overlap between the facts the Trustee intends to allege—and specifically as to allegations regarding bad faith of the defendants—in this Adversary Proceeding and in the Trustee's actions against entities affiliated with Defendant—namely, *Picard v. Credit Suisse AG, et al.* (Adv. Pro. No. 11-02925), *Picard v. Credit Suisse AG (as successor)* (Adv. Pro. No. 12-01676), *Picard v. Trincaster Corporation* (Adv. Pro. No. 11-02731), and *Picard v. Solon Capital, Ltd.* (Adv. Pro. No. 12-01025) (collectively, the "Related Adversary Proceedings");

WHEREAS, the Related Adversary Proceedings were dismissed in full pursuant to the ET Decision and are currently closed, but would be reinstated if the Second Circuit were to issue the mandate;

WHEREAS, the Parties believe it would be in their interests and in the interests of judicial economy for the Trustee to move forward simultaneously with respect to the claims in this Adversary Proceeding and the claims in the Related Adversary Proceedings, to the extent this does not cause undue delay;

WHEREAS, the Parties have agreed to defer scheduling litigation of the Trustee's motion for leave to file an amended complaint to allow the Parties to determine the appropriate next steps in this Adversary Proceeding in light of the status of the briefing on the Cert Petition.

IT IS HEREBY STIPULATED AND AGREED that:

1. The Parties will defer any agreement upon a proposed briefing schedule for the Trustee's motion for leave to file an amended complaint until March 1, 2020 (or earlier, if mutually agreed by the Parties).

2. Entry into this Stipulation shall not impair or otherwise impact the Trustee's and Defendant's rights and defenses, including without limitation, defenses based on jurisdiction and venue.

3. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic, or electronic copy of this Stipulation shall be deemed an original.

Dated: October 23, 2019  
New York, New York

/s/ Howard L. Simon

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*Attorneys for Defendant*

SO ORDERED: October 23<sup>rd</sup>, 2019

/s/ STUART M. BERNSTEIN

Hon. Stuart M. Bernstein  
United States Bankruptcy Judge